

**SUBJECT: APPROVAL OF A SOLE SOURCE AGREEMENT WITH SPRONK
WATER ENGINEERS FOR 2024 WATER RIGHTS
ADMINISTRATION**

DATE: FEBRUARY 6, 2024

PRESENTED BY: KURT KOWAR, P.E., PUBLIC WORKS DIRECTOR

SUMMARY:

Staff is recommending entering into a sole source contract with Spronk Water Engineers (Spronk) for water rights engineering consulting services for 2024.

Spronk has been providing assistance in the administration of the City's water rights since 2012 and successfully assumed the lead role in 2017. This long term relationship has distinct advantages to City in the operation of a complex water system. Spronk is able to analyze impacts based on their familiarity allowing for greater precision and reserves budget for more in-depth evaluations. In addition, the number of potential replacement consulting firms are limited as a result of the conflict of interest and availability associated with this type work. Lastly, the collaboration between Spronk and the City Water Attorneys (Hill & Pollock) is a valuable relationship that has allowed for the successful completion, defense and protection of many of the City's water rights and system.

Staff collect and participate in occasional surveys of comparison of water engineering fees with surrounding communities and finds Spronk to remain competitive.

Staff is recommending that Spronk continue to provide guidance, strategy, and management of drought, flood, and day-to-day operations.

The attached Agreement's scope includes four tasks described below:

- Task A – water rights administration services for 2024 in an amount of \$113,000.
- Task B – Continuation of preparing the City's water accounting documents for an audit by CDWR, which is expected to occur in the near future. The requested budget for this task is \$6,000.
- Task C – represents the City's interests, along with the Hill & Pollock Law Firm, in water court cases affecting the City's portfolio in an amount of \$16,000.
- Task D – Provides for review of water rights going up for sale, which the City could be interested in purchasing. The 2024 budget for this task is proposed at \$2,000.

The City has a complex water rights portfolio with an estimated value exceeding \$150 million. These water rights provide the entire supply for the City's residents, businesses,

SUBJECT: 2024 WATER RIGHTS ADMINISTRATION AGREEMENT**DATE: FEBRUARY 6, 2024****PAGE 2 OF 2**

visitors, and the City's own needs. This portfolio contains rights that place a variety of conditions on raw water diversion, including limitation on diversion dates and minimum stream flow requirements, as well as stream flow replenishment timing and locations. Additionally, the City's water rights vary seasonally, with excess water available in the spring and few diversions available in the winter. Administration of this portfolio requires thorough knowledge of Colorado water law, understanding of its application in daily operations, and a significant planning effort to ensure a constant water supply throughout the year. Supplemental tasks include daily monitoring of stream conditions, water right priorities, reservoir levels, City water demands, coordination with the Water Commissioner and City staff, as well as meeting reporting requirements set by the Colorado Division of Water Resources (CDWR).

FISCAL IMPACT:

The Agreement with Spronk is for \$137,000 and will be paid from the 2024 Water Fund operational budget line items 501462-540910. This budget line item was established at \$185,000 and includes \$45,000 for the water conservation program.

PROGRAM/SUB-PROGRAM IMPACT:

The program goal for Utilities is to ensure safe, reliable, great tasting water. The effective management of the City's water rights is critical to the reliability of the water supply.

RECOMMENDATION:

Approve the Consulting Services Agreement with Spronk Water Engineers for water rights administration.

ATTACHMENT(S):

1. Agreement between the City of Louisville and Spronk Water Engineers.

STRATEGIC PLAN IMPACT:

☐	 Financial Stewardship & Asset Management	☒	 Reliable Core Services
☐	 Vibrant Economic Climate	☐	 Quality Programs & Amenities
☐	 Engaged Community	☐	 Healthy Workforce
☐	 Supportive Technology	☐	 Collaborative Regional Partner

**AN AGREEMENT BY AND BETWEEN THE CITY OF LOUISVILLE
AND SPRONK WATER ENGINEERS, INC.
FOR CONSULTING SERVICES**

1.0 PARTIES

This AGREEMENT FOR CONSULTING SERVICES (this “Agreement”) is made and entered into this 6th day of February, 2024 (the “Effective Date”), by and between the **City of Louisville**, a Colorado home rule municipal corporation, hereinafter referred to as the “City”, and Spronk Water Engineers, Inc., a Colorado corporation hereinafter referred to as the “Consultant”.

2.0 RECITALS AND PURPOSE

- 2.1 The City desires to engage the Consultant for the purpose of providing water rights engineering consulting services as further set forth in the Consultant’s Scope of Services (which services are hereinafter referred to as the “Services”).
- 2.2 The Consultant represents that it has the special expertise, qualifications and background necessary to complete the Services.

3.0 SCOPE OF SERVICES

The Consultant agrees to provide the City with the specific Services and to perform the specific tasks, duties and responsibilities set forth in Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference.

4.0 COMPENSATION

- 4.1 The City shall pay the Consultant for services under this agreement a total not to exceed the amounts set forth in Exhibit “B” attached hereto and incorporated herein by this reference. [Further revise as needed to reflect whether contract is hourly of flat amount]. The City shall not pay mileage and other reimbursable expenses (such as meals, parking, travel expenses, necessary memberships, etc.), unless such expenses are (1) clearly set forth in the Scope of Services, and (2) necessary for performance of the Services (“Pre-Approved Expenses”). The foregoing amounts of compensation shall be inclusive of all costs of whatsoever nature associated with the Consultant’s efforts, including but not limited to salaries, benefits, overhead, administration, profits, expenses, and outside consultant fees. The Scope of Services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.

- 4.2 The Consultant shall submit monthly an invoice to the City for Services rendered and a detailed expense report for Pre-Approved Expenses incurred during the previous month. The invoice shall document the Services provided during the preceding month, identifying by work category and subcategory the work and tasks performed and such other information as may be required by the City. The Consultant shall provide such additional backup documentation as may be required by the City. The City shall pay the invoice within thirty (30) days of receipt unless the Services or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

5.0 PROJECT REPRESENTATION

- 5.1 The City designates Cory Peterson as the responsible City staff to provide direction to the Consultant during the conduct of the Services. The Consultant shall comply with the directions given by Cory Peterson and such person's designees.
- 5.2 The Consultant designates Katie Leone as its project manager and as the principal in charge who shall be providing the Services under this Agreement. Should any of the representatives be replaced, particularly Katie Leone, and such replacement require the City or the Consultant to undertake additional reevaluations, coordination, orientations, etc., the Consultant shall be fully responsible for all such additional costs and services.

6.0 TERM

- 6.1 The term of this Agreement shall be from the Effective Date to December 31, 2024, unless sooner terminated pursuant to Section 13, below. The Consultant's Services under this Agreement shall commence on the Effective Date and Consultant shall proceed with diligence and promptness so that the Services are completed in a timely fashion consistent with the City's requirements.
- 6.2 Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the City under this Agreement are subject to annual budgeting and appropriation by the Louisville City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year.

7.0 INSURANCE

- 7.1 The Consultant agrees to procure and maintain, at its own cost, the policies of insurance set forth in Subsections 7.1.1 through 7.1.4. The Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. The coverages required below shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder. The required coverages are:
- 7.1.1 Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.
- 7.1.2 General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall include the City of Louisville, its officers and its employees, as additional insureds, with primary coverage as respects the City of Louisville, its officers and its employees, and shall contain a severability of interests provision.
- 7.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FOUR HUNDRED THOUSAND DOLLARS (\$400,000) per person in any one occurrence and ONE MILLION DOLLARS (\$1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Consultant's owned, hired or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Consultant has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Consultant providing services to the City of Louisville under this Agreement.
- 7.1.4 Professional Liability coverage with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.
- 7.2 The Consultant's general liability insurance, automobile liability and physical damage insurance, and professional liability insurance shall be endorsed to include the City, and its elected and appointed officers and employees, as additional insureds, unless the City in its sole discretion waives such requirement. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Consultant. Such policies shall contain a

severability of interests provision. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

- 7.3 Certificates of insurance shall be provided by the Consultant as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. No required coverage shall be cancelled, terminated or materially changed until at least 30 days' prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 7.4 Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.
- 7.5 The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the City, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if and to the extent such injury, loss, or damage is caused by the negligent act, omission, or other fault of the Consultant or any subcontractor of the Consultant, or any officer, employee, or agent of the Consultant or any subcontractor, or any other person for whom Consultant is responsible. The Consultant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. The Consultant shall further bear all other costs and expenses incurred by the City or Consultant and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorneys' fees if the court determines that these incurred costs and expenses are related to such negligent acts, errors, and omissions or other fault of the Consultant. Notwithstanding the foregoing, Consultant's duty to defend, indemnify and hold harmless the City, and its elected and appointed officials and employees as set forth in this section shall only arise upon determination, by adjudication, alternative dispute resolution, or mutual agreement between Consultant and the City, of the Consultant's liability or fault.

The City shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section 8.0. The Consultant's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

9.0 QUALITY OF WORK

Consultant's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of services of a similar nature in the Denver metropolitan area.

10.0 INDEPENDENT CONTRACTOR

It is the expressed intent of the parties that the Consultant is an independent contractor and not the agent, employee or servant of the City, and that:

- 10.1. Consultant shall satisfy all tax and other governmentally imposed responsibilities including but not limited to, payment of state, federal, and social security taxes, unemployment taxes, worker's compensation and self-employment taxes. No state, federal or local taxes of any kind shall be withheld or paid by the City.
- 10.2. **Consultant is not entitled to worker's compensation benefits except as may be provided by the Consultant nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Consultant or some entity other than the City.**
- 10.3. Consultant does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.
- 10.4. Consultant has and retains control of and supervision over the performance of Consultant's obligations hereunder and control over any persons employed by Consultant for performing the Services hereunder.
- 10.5. The City will not provide training or instruction to Consultant or any of its employees regarding the performance of the Services hereunder.
- 10.6. Neither the Consultant nor any of its officers or employees will receive benefits of any type from the City.
- 10.7. Consultant represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.
- 10.8. All Services are to be performed solely at the risk of Consultant and Consultant

shall take all precautions necessary for the proper and sole performance thereof.

- 10.9. Consultant will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate and distinct.

11.0 ASSIGNMENT

Except as provided in section 22.0 hereof, Consultant shall not assign or delegate this Agreement or any portion thereof, or any monies due or to become due hereunder without the City's prior written consent.

12.0 DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

13.0 TERMINATION

- 13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.
- 13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least fifteen (15) days in advance of the termination date. In the event of such termination, the Consultant will be paid for the reasonable value of the services rendered to the date of termination, not to exceed a pro-rated daily rate, for the services rendered to the date of termination, and upon such payment, all obligations of the City to the Consultant under this Agreement will cease. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.0 INSPECTION AND AUDIT

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.0 DOCUMENTS

All computer input and output, analyses, plans, documents photographic images, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed for the City in performance of the Services are and shall remain the sole and exclusive property of the City. All such materials shall be promptly provided to the City upon request therefor and at the time of termination of this Agreement, without further charge or expense to the City. Consultant shall not provide copies of any such material to any other party without the prior written consent of the City.

16.0 ENFORCEMENT

- 16.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.
- 16.2 This Agreement shall be deemed entered into in Boulder County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the District Court of Boulder County of the State of Colorado, and in no other court. Consultant hereby waives its right to challenge the personal jurisdiction of the District Court of Boulder County of the State of Colorado over it.

17.0 COMPLIANCE WITH LAWS

- 17.1 Consultant shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.
- 17.2 Consultant acknowledges that the City of Louisville Code of Ethics provides that independent contractors who perform official actions on behalf of the City which involve the use of discretionary authority shall not receive any gifts seeking to influence their official actions on behalf of the City, and that City officers and employees similarly shall not receive such gifts. Consultant agrees to abide by the gift restrictions of the City's Code of Ethics.

18.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

19.0 NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, by United States first class mail, postage prepaid, registered or

certified, return receipt requested, by national overnight carrier, or by facsimile transmission, addressed to the party for whom it is intended at the following address:

If to the City:

City of Louisville
Attn: City Manager
749 Main Street
Louisville, Colorado 80027
Telephone: (303) 335-4533
Fax: (303) 335-4550

If to the Consultant:

Attn: Katie Leone
1000 Logan Street
Denver, Colorado 80203
e-mail: KLeone@spronkwater.com

Any such notice or other communication shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt, if by United States mail; or on facsimile transmission receipt. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

20.0 EQUAL OPPORTUNITY EMPLOYER

- 20.1 Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.
- 20.2 Consultant shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

21.0 NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22.0 SUBCONTRACTORS

Consultant may utilize subcontractors identified in its qualifications submittal to assist with non-specialized works as necessary to complete projects. Consultant will submit any proposed subcontractor and the description of its services to the City for approval. The City will not work directly with subcontractors.

23.0 AUTHORITY TO BIND

Each of the persons signing below on behalf of any party hereby represents and warrants that such person is signing with full and complete authority to bind the party on whose behalf of whom such person is signing, to each and every term of this Agreement.

In witness whereof, the parties have executed this Agreement to be effective on the date first above written.

CITY OF LOUISVILLE,
a Colorado Municipal Corporation

By: _____
Christopher M. Leh, Mayor

Attest: _____
Meredyth Muth, City Clerk

CONSULTANT:

 _____

By: Katryn Leone
Title: Project Manger

Exhibit A – Scope of Services

Task A – Daily Water Rights Administration

This task includes managing daily operations of the City's raw water supply. The work to be performed under this task shall include coordination and meeting with City staff, Coal Creek Golf Course staff, Colorado Division of Water Resources' Division 1 Engineer's office, Water District 6 water commissioner, and other local municipalities and ditch companies for the purpose of diverting, storing, and administering water rights pursuant to the terms and conditions of the various City decrees. The work shall include managing the City's water right entitlements and obligations as they apply to return flows requirements, reuse capabilities, and all reporting obligations with Northern Water Conservancy District and Farmers Reservoir and Irrigation Company ("FRICO").

This task's deliverable shall include the submittal of a complete set of monthly water accounting to the Division 1 Engineer, FRICO, and the City's Public Works' staff. The deliverable shall be submitted to the City on or before the 20th day of each month. The work performed under this task shall be directed in writing by the City.

Task B – State of Colorado Accounting Audit and Revisions

The Colorado Division of Water Resources has undertaken a water rights audit for all water users in the South Platte basin, which the City is a participant. The purpose of the audit is to provide the State with a standardized accounting form system to be used by all water right holders in the basin. Currently, Louisville uses a customized system of accounting that was developed in 1994. As a result of the audit, this customized accounting will need to be modified to comply with the State's new accounting protocol. This task includes modernization/transition of the City's water rights accounting process from the current "Water Manager" software to a customized EXCEL spreadsheet format conforming to the State's accounting protocol. Integration of the City's Marshall Lake accounting into the newly developed EXCEL spreadsheet accounting forms. Coordination and collaboration with the Division 1 Engineer's office to insure approval of the City's modified accounting forms and procedures. This includes meetings, teleconferences, memorandums, and any other form of negotiation and compliance standards. The cost estimate for this task is based on time and materials, given the uncertainty and full extent of the State's review and audit process.

Task C – On Call Engineering Services

Consultant will provide additional engineering services as requested by the City during 2023. Consultant will be compensated for such work at the rates set forth in Exhibit C. Work associated with task may include review and preliminary analysis of other entities' water court applications (including the pending Case Nos. 20CW3216 - City and County of Broomfield and 22CW3176 - Eldorado Artesian Springs), protection of the City's water rights in Federal, State, and local permitting, water resource planning and projections.

Task D – Water Acquisition Review Services

Consultant will assist City staff with evaluation of water rights and compiling bids for water resources the City is considering purchasing.

EXHIBIT B

Consultant shall be compensated for work described above at the rates and not-to-exceed totals specified below.

Task	Not-to-Exceed Amount
A	\$113,000
B	\$6,000
C	\$16,000
D	\$2,000
TOTAL	\$137,000

GENERAL HOURLY WAGE RATES for 2024

Principal Engineer	\$235
Senior Engineer II	\$200
Senior Watershed Scientist	\$185
Senior Engineer I	\$175
Project Hydrologist	\$160
Staff Engineer	\$160
Assistant Engineer	\$125
Technician	\$70
Administrative	\$50